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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 26th December, 1986/Pausa 5, 1908 (Saka)

The following Act of Parliament received the assent of the President on the 24th December, 1986, and is hereby published for general information:—

THE SHIPPING DEVELOPMENT FUND COMMITTEE (ABOLITION) ACT, 1986

No. 66 OF 1986

[*24th December*, 1986.]

An Act to abolish the Shipping Development Fund Committee constituted under the Merchant Shipping Act, 1958 and to provide for certain matters incidental thereto.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Shipping Development Fund Committee (Abolition) Act, 1986.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

44 of 1958.

(*a*) "Act" means the Merchant Shipping Act, 1958;

(*b*) "appointed day" means the date of commencement of this Act;

(*c*) "Committee" means the Shipping Development Fund Committee constituted under section 15 of the Act;

(*d*) "designated person" means the person appointed as such under section 16 of this Act;

(*e*) "Fund" means the Shipping Development Fund formed under section 14 of the Act;

(*f*) "notified order" means an order notified in the Official Gazette;

(*g*) "shipowner" means a person of the description mentioned in section 21 of the Act or who had obtained loans or financial assistance in any other form from the Committee;

(*h*) "shipping concern" means any concern engaged in the business of shipping, owned, controlled or managed by a shipowner.

CHAPTER II

ABOLITION OF THE SHIPPING DEVELOPMENT FUND COMMITTEE AND VESTING OF ASSETS AND LIABILITIES OF THE COMMITTEE IN THE CENTRAL GOVERNMENT

Abolition of the Shipping Development Fund Committee and consequential amendments in the Act.

3. On and from the appointed day, the Shipping Development Fund Committee constituted under section 15 of the Act shall stand abolished, and accordingly the Act shall stand amended as follows:—

(*a*) in the long title, the words "and a Shipping Development Fund" shall be omitted;

(*b*) Part IV shall be omitted.

Consequential provisions.

4. On the abolition of the Committee,—

(*a*) all the rights and privileges of the Committee shall become the rights and privileges of the Central Government;

(*b*) all properties, movable and immovable, including cash balances, reserve funds, instruments and moneys lying to the credit of the Committee and all rights and interests in, or arising out of, such properties as were immediately before the appointed day, in the ownership, possession, power or control of the Committee, and all books of account, registers, records and all other documents of whatever nature relating thereto, shall vest in the Central Government;

(*c*) all borrowings, liabilities and obligations of the Committee of whatever kind and subsisting immediately before the appointed day, shall be deemed, on and from such day, to be the borrowings, liabilities and obligations, as the case may be, of the Central Government; and

(*d*) all contracts entered into, and all matters and things engaged to be done by, with or for, the Committee and subsisting immediately before the appointed day shall be deemed, on and from such day, to have been entered into, or engaged to be done by, with or for, the Central Government.

Continuation of suits, etc., against Central Government.

5. (1) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to the Fund or the Committee is pending by or against such Committee, the same shall not abate, be discontinued, or be in any way prejudicially affected by reason of the abolition of the Committee; but such suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government.

(2) Where, before the appointed day, no cause of acion for any suit or proceeding or any right to appeal arose in favour of, or against the Committee and the institution of any suit or proceeding on such cause of action or the filing of such appeal was not barred before the appointed day, such suit or proceeding may be instituted or appeal may be filed by or against the Central Government.

Moneys, etc., of the Committee to be credited to the Consolidated Fund of India.

6. On the appointed day, all moneys and cash balances lying in the credit of the Committee shall become part of, and be credited to, the Consolidated Fund of India.

Transfer of services of existing employees of the Committee.

7. (1) Every person, who has been, immediately before the appointed day, employed under the Committee, shall become, on and from the appointed day, an employee of the Central Government and shall hold office under the Central Government with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting and shall continue to do so unless and until his employment under the Central Government is duly terminated or until his remuneration and other conditions of service are duly altered by the Central Government.

14 of 1947.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other person employed under the Committee shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(3) Where, under the terms of any contract of service or otherwise, any person, whose services stand transferred to the Central Government by reason of the provisions of this Act, is entitled to any arrears of salary or wages or any payments for any leave not availed of, or to any other payments, not being payment by way of gratuity or pension, such person may enforce his claim against the Central Government.

CHAPTER III

SPECIAL POWERS OF THE CENTRAL GOVERNMENT

Power of Central Government to call for repayment before agreed period.

8. Notwithstanding anything contained in any other law for the time being in force or anything in any agreement to the contrary, the Central Government may, by notice in writing, require a shipowner to whom the Committee had granted any financial assistance at any time before the appointed day, to discharge forthwith in full his entire dues and also discharge his other liabilities to the Central Government, if—

(*a*) it appears to the Central Government that false or misleading information in any material particular was given by the shipowner for the purpose of procuring or for continuing to procure the benefit of such financial assistance; or

(*b*) the shipowner has failed to comply with the terms of his agreement with the Committee; or

(*c*) there is a reasonable apprehension that the shipowner is unable to pay his debts or, that proceedings for liquidation have been or may be commenced against the shipowner; or

(*d*) the Central Government has reason to believe that the shipowner has not used or applied the financial assistance granted by the Committee strictly for the purpose for which it was granted or has otherwise misapplied or misappropriated the same for wrongful gain; or

(*e*) the property assigned, charged, hypothecated, mortgaged or pledged to the Committee as security for financial assistance is not insured or kept insured by the shipowner to the satisfaction of the Central Government, or if such property has depreciated in value to such an extent that, in the opinion of the Central Government, further security to the satisfaction of the Central Government should be given and such security is not given; or

(*f*) without the permission of the Central Government any ship, machinery, plant or other property, whether forming part of the security or otherwise, is removed by such shipowner without being replaced; or

(*g*) for any other reason, it is necessary so to do to protect the interests of the Central Government.

Explanation.—For the purposes of this Act, "financial assistance" shall include any loan, advance or monetary assistance including any guarantee or counter-guarantee given to the shipowner by the Committee at any time before the appointed day.

Appointment of receiver without intervention of court.

9. (*1*) Where the Central Government issues a notice under section 8 and the shipowner fails to comply with such notice, the Central Government may, notwithstanding anything contained in any other law for the time being in force or anything contrary contained in any agreement, deed or other instrument in the nature of any guarantee or counter-guarantee, appoint, without intervention of the court, a receiver to

detain and take possession of any ship or other assets belonging to the shipowner whether mortgaged, hypothecated or charged, with power to—

(*i*) sell such ship or other assets by public auction notwithstanding anything to the contrary contained in section 51 of the Act;

(*ii*) demand and recover all the income in respect of which he is appointed receiver of any such ship or other assets and to appropriate the same in the discharge of rents, taxes and other dues and outgoings affecting the same and in payment of the liabilities of the shipowner under any mortgage, hypothecation or charge to the Central Government; or

(*iii*) use, operate, charter or lease such ship or other assets to generate incomes, rents or profits to meet the liabilities of the shipowner to the Central Government under the mortgage, hypothecation or charge, and pay the residue, if any, of the money received by him to the person who, but for the appointment of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to such property.

(2) A receiver appointed under this section shall be deemed to be the agent of the shipowner and the shipowner shall be solely responsible for the receiver's acts or defaults unless such acts or defaults are due to any improper intervention on the part of the Central Government.

Appointment of directors and administrators.

10. (1) Where the Central Government requires a shipowner to discharge his dues and liabilities pursuant to a notice issued under section 8 and the shipowner fails to comply with such notice, the Central Government may, notwithstanding anything contained in any other law for the time being in force, or anything contrary contained in any agreement, deed or other instrument in the nature of any guarantee or counter-guarantee, and without prejudice to anything contained in section 9, by notified order, appoint as many persons as it thinks fit,—

(*a*) to be directors of the company, if the shipowner is a company, as defined in the Companies Act, 1956, or

1 of 1956.

(*b*) in any other case, to be the administrators of the shipping concern.

(2) The power to appoint directors or administrators under this section includes the power to appoint any individual, firm or body corporate to be the directors or, as the case may be, administrators, on such terms and conditions as the Central Government may think fit.

(3) For the removal of doubts, it is hereby declared that the power to appoint directors or administrators include the power to remove or replace the persons so appointed.

1 of 1956.

(4) Nothing in the Companies Act, 1956, or in any other law for the time being in force, or in any instrument relating to the shipowner, if it is a company shall, in so far as it makes, in relation to a director, any provision for the holding of any share qualification, age limit, restriction on the number of directors or directorships, retirement by rotation or removal from office, apply to any director appointed by the Central Government under this section.

Effect of notified order.

11. (*1*) On the issue of a notified order under section 10—

(*a*) if the shipowner is a company as defined in the Companies Act, 1956, all persons holding office as directors of the shipowner, and in any other case, all persons holding any office having the powers of superintendence, direction and control immediately before the issue of the notified order, shall be deemed to have vacated their offices as such; 1 of 1956.

(*b*) any contract of management between the shipowner and any director or person referred to in clause (*a*) holding office as such immediately before the issue of the notified order shall be deemed to have been terminated.

(*2*) The directors or administrators appointed under section 10 shall take such steps as may be necessary to take into their custody or under their control, the property, effects and actionable claims to which the shipowner is, or appears to be, entitled, and all the property and effects of the shipowner shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the notified order.

(*3*) Subject to the other provisions of this Act, the directors appointed under section 10, shall, for all purposes, be the directors of such company duly constituted under the Companies Act, 1956, and such directors shall alone be entitled to exercise all the powers of such directors. 1 of 1956.

Powers and duties of directors and administrators.

12. Subject to the control of the Central Government, the directors, or, as the case may be, the administrators appointed under section 10, shall take such steps as may be necessary for the purpose of efficiently managing the business of the shipowner and shall exercise such powers and discharge such duties as may be exercisable by persons in charge of managing the said business.

No right to compensation for termination of contract of management, etc.

13. (*1*) Notwithstanding anything to the contrary contained in any contract or in any law for the time being in force, no managing or whole-time director or any other director or a manager or any person in charge of management of a shipowner which is a company shall be entitled to any compensation for the loss of office or for the premature termination, under this Act, of any contract of management entered into by him with such company.

(*2*) Nothing contained in sub-section (*1*) shall affect the right of any such managing or whole-time director, or any other director or manager or any such person in charge of management to recover from the shipowner moneys recoverable otherwise than by way of such compensation.

Application of Act 1 of 1956.

14. (*1*) Where directors have been appointed under section 10 in relation to a company, then, notwithstanding anything contained in the Companies Act, 1956 or in the memorandum or articles of association of such company,—

(*a*) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Central Government;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie or be continued in any court, except with the consent of the Central Government.

(2) Subject to the other provisions of this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Companies Act, 1956, shall continue to apply to a shipowner which is a company in the same manner as it applied thereto before the issue of the notified order under section 10.

1 of 1956.

Recovery of dues as arrear of land revenue.

15. (1) Any amount payable to the Central Government by the shipowner pursuant to a notice issued under section 8 may be recovered in the same manner as an arrear of land revenue.

(2) The Central Government may, for purposes of sub-section (1), appoint an officer to prepare a certificate specifying the amount due from such shipowner and send it to the Collector of the district in which the shipowner owns any property or carries on business provided that the officer so appointed shall, before sending the certificate to the Collector, give an opportunity of being heard to the shipowner.

(3) The Collector shall, on receipt of such certificate, proceed to recover from such shipowner the amount specified in the certificate.

Delegation of powers to the designated person.

16. (1) The Central Government may, by notification in the Official Gazette, and subject to such conditions, restrictions and limitations as may be specified therein or otherwise, delegate all or any of its powers and functions under this Chapter to a designated person.

(2) Where any notification has been issued under sub-section (1), the provisions of this Act shall apply in relation to the designated person as they apply in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government have been delegated to the designated person.

CHAPTER IV

MISCELLANEOUS

Effect of the Act on other laws.

17. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of any company which is a shipowner or in any agreement, deed or other instrument having effect by virtue of any law other than this Act.

Protection of action taken in good faith.

18. No suit or other legal proceeding shall lie against the Central Government or any director or administrator appointed by the Central Government or the designated person or any officer or other employee of the Central Government or the designated person for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any other law or provision having the force of law.

Indemnification of directors, etc.

19. Every director or administrator appointed under section 10 and the designated person appointed under section 16 shall be indemnified by the Central Government against all losses and expenses incurred by him in relation to the discharge of his duties, except such as are caused by his own wilful act or default.

Directors, etc., to be public servants.

20. Every director or administrator appointed under section 10 and the designated person appointed under section 16 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

C. RAMAN MENON,

Additional Secy. to the Govt. of India.

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